

Introduced: 1/31/86
Referred: Labor and Commerce,
Judiciary and Finance

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 382

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to civil actions; and amending
7 Alaska Rules of Civil Procedure 49, 52, 54, 58, and
8 82; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. PURPOSE AND FINDINGS. (a) Tort law in this state has
11 generally been developed by the courts on a case-by-case basis. While this
12 process has resulted in some significant changes in the law, including
13 amelioration of the harshness of many common law doctrines, the legislature
14 has periodically intervened in order to bring about needed reforms. The
15 purpose of this Act is to enact further reforms in order to create a more
16 equitable distribution of the cost and risk of injury and increase the
17 availability and affordability of insurance.

18 (b) The legislature finds that boroughs, cities, and other govern-
19 mental entities are faced with increased exposure to lawsuits and awards
20 and dramatic increases in the cost of insurance coverage. These escalating
21 costs ultimately affect the public through higher taxes, loss of essential
22 services, and loss of the protection provided by adequate insurance. In
23 order to ensure the continued availability and affordability of quality
24 governmental services, comprehensive reform is necessary.

25 (c) The legislature also finds comparable cost increases in profes-
26 sional liability insurance. Escalating malpractice insurance premiums
27 discourage physicians and other health care providers from initiating or
28 continuing their practice or offering needed services to the public and
29 contribute to the rising costs of consumer health care. Other

1 professionals, such as architects and engineers, face similar difficult
2 choices, financial instability, and unlimited risk in providing services to
3 the public.

4 (d) The legislature also finds that general liability insurance is
5 becoming unavailable or unaffordable to many businesses, individuals, and
6 nonprofit organizations in amounts sufficient to cover potential losses.
7 High premiums have discouraged socially and economically desirable activ-
8 ities and encourage many to go without adequate insurance coverage.

9 (e) It is the intent of the legislature to reduce costs associated
10 with the tort system, while assuring that reasonable compensation for
11 persons injured through the fault of others is available. Objective limits
12 and greater predictability in the amount of awards is necessary. The costs
13 of providing reasonable compensation should be reduced whenever it is
14 possible and equitable by eliminating potential windfalls to persons and
15 awards for purposes that were not intended.

16 * Sec. 2. AS 09 is amended by adding a new chapter to read:

17 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

18 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action based on
19 fault seeking damages for personal injury or property damage, the
20 claimant is entitled to recover noneconomic losses.

21 (b) In an action seeking damages for personal injury or property
22 damage, a claimant may not recover damages for noneconomic losses in
23 excess of \$750,000. In applying the limits of this subsection, dam-
24 ages for loss of consortium, loss of society and companionship, and
25 destruction of the parent-child relationship that are recovered by a
26 claimant who did not sustain bodily injury shall be added to noneco-
27 nomic damages recovered by a claimant who did incur bodily injury if
28 both claims arose out of the same conduct and are substantially relat-
29 ed.

1 **Sec. 09.17.020. PERIODIC PAYMENTS FOR AWARDS OF FUTURE DAMAGES.**

2 **(a) In an action based on fault seeking damages for personal injury**
3 **or property damage in which a court or jury awards future damages in**
4 **excess of \$100,000, the court shall, at the request of a party, enter**
5 **judgment that provides for the periodic payment in whole or in part of**
6 **the future damages. In the judgment, the court shall make a specific**
7 **finding as to the dollar amount of periodic payments intended to**
8 **compensate the judgment creditor for future damages. As a condition**
9 **to entry of the judgment, the court may require a judgment debtor who**
10 **has not made adequate provision for payment of the periodic payments**
11 **to post security sufficient to assure full payment of the future**
12 **damages. Upon satisfaction of the judgment, the security, or so much**
13 **as remains, shall be ordered returned to the judgment debtor.**

14 **(b) In ordering periodic payments for future damages, the court**
15 **shall determine the present value of those payments and include the**
16 **present value of future periodic payments in computing the total award**
17 **from which attorneys' fees are calculated.**

18 **(c) A judgment ordering the payment of future damages by period-**
19 **ic payments must specify the recipient of the payments, the dollar**
20 **amount of the payments, the interval between payments, and the number**
21 **of payments or the period of time over which payments shall be made.**
22 **The payments may be modified only in the event of the death of the**
23 **judgment creditor.**

24 **(d) If the court finds that the judgment debtor has exhibited a**
25 **continuing pattern of failing to make the payments as specified in (c)**
26 **of this section, the court may order the judgment debtor to pay the**
27 **judgment creditor all damages caused by the failure to make the peri-**
28 **odic payments, including court costs and attorneys' fees.**

29 **(e) Upon the death of the judgment creditor, the court that**

1 rendered the original judgment may, upon petition of a party in inter-
2 est, modify the judgment to award and apportion the unpaid future
3 damages. Money damages awarded for loss of future earnings may not be
4 reduced or payments terminated by reason of the death of the judgment
5 creditor but shall be paid to persons that the judgment creditor owed
6 a duty of support, as provided by law, immediately before death.

7 Sec. 09.17.030. APPORTIONMENT OF DAMAGES. (a) In an action
8 involving fault of more than one party, including third-party defen-
9 dants, persons released by the claimant, persons immune from liability
10 to the claimant, and persons with other individual defenses against
11 the claimant, judgment shall be entered against each defendant, except
12 those who have been released by the claimant, in an amount that repre-
13 sents that party's proportionate share of the claimant's total dam-
14 ages. The liability of each defendant is several only and is not
15 joint except

16 (1) a party is responsible for the fault of another person
17 or for payment of the proportionate share of another party when both
18 were acting in concert or when a person was acting as an agent or
19 servant of the party;

20 (2) the defendants are jointly and severally liable for an
21 indivisible claim for personal injury or property damage if the trier
22 of fact determines that the claimant or party suffering bodily injury
23 or incurring property damage was not at fault.

24 (b) In determining a party's proportionate share of the claim-
25 ant's total damages, the trier of fact shall determine the percentage
26 of the total fault that is attributable to each party that caused the
27 claimant's damages, including the claimant or person suffering per-
28 sonal injury or incurring property damage, third-party defendants,
29 persons released by the claimant, and persons with other individual

1 defense against the claimant.

2 Sec. 09.17.040. ATTORNEYS' FEES. (a) In an action based on
3 fault seeking damages for personal injury or property damage, an
4 attorney may not contract for or collect a contingency fee for repre-
5 senting a person seeking damages in excess of the following limits:

- 6 (1) 40 percent of the first \$50,000 recovered;
7 (2) 33 1/3 percent of the next \$200,000 recovered;
8 (3) 25 percent of the next \$750,000 recovered;
9 (4) 20 percent of the amount of the recovery that exceeds
10 \$1,000,000.

11 (b) The limitations in (a) of this section apply whether the
12 recovery is by settlement, arbitration, or judgment.

13 (c) If periodic payments for future damages are awarded, the
14 court shall determine the present value of those payments and include
15 the present value of future periodic payments in computing the total
16 award from which attorney's fees are calculated.

17 (d) In computing the fee specified in (a) of this section, the
18 costs as taxed, including interest upon a judgment, shall be consid-
19 ered part of the amount recovered. Liens, assignments or claims in
20 favor of hospitals, or of self-insurers or insurance carriers may not
21 be deducted from the total amount recovered when computing the fee
22 under (a) of this section.

23 (e) If an attorney believes in good faith that the fee schedule
24 fails to provide adequate compensation due to extraordinary circum-
25 stances, then the attorney may apply for greater compensation. Appli-
26 cation may be made upon affidavit with written notice and an oppor-
27 tunity to be heard given to the party or parties to the contract and
28 other persons holding liens or assignments on the recovery. Applica-
29 tion shall be made

- 1 (1) to the judge assigned to the action; or
2 (2) if the action had not been assigned, then to the pre-
3 siding judge in the district in which the action is filed; or
4 (3) if no action is filed, then to the superior court
5 presiding judge in the district in which the attorney resides.

6 (f) Upon motion, if extraordinary circumstances are found to
7 exist the court may fix as reasonable compensation for legal services
8 rendered an amount greater than that specified in this section. If
9 the motion is granted, the court shall make a written order and brief-
10 ly set out the reasons for granting the greater compensation. A copy
11 of the order shall be served on all persons entitled to receive notice
12 of the application.

13 (g) In determining the reasonableness of a party's attorneys'
14 fees upon application under (e) of this section, the court shall
15 consider the following:

16 (1) the time and labor required, the novelty and difficulty
17 of the questions involved, and the skill requisite to perform the
18 legal service properly;

19 (2) the likelihood, if apparent to the client, that the
20 acceptance of the particular employment will preclude other employment
21 by the lawyer;

22 (3) the fee customarily charged in the locality for similar
23 legal services;

24 (4) the amount involved and the results obtained;

25 (5) the time limitations imposed by the client or by the
26 circumstances;

27 (6) the nature and length of the professional relationship
28 with the client;

29 (7) the experience, reputation, and ability of the lawyer

1 or lawyers performing the services; and

2 (8) whether the fee is fixed or contingent.

3 Sec. 09.17.100. DEFINITIONS. In this chapter, unless the con-
4 text otherwise requires

5 (1) "bodily injury" means physical injury, sickness, or
6 disease, including death;

7 (2) "noneconomic damages" means subjective, nonmonetary
8 losses, including, but not limited to pain, suffering, inconvenience,
9 mental anguish, disability or disfigurement incurred by the injured
10 party, emotional distress, loss of society and companionship, loss of
11 consortium, injury to reputation and humiliation, and destruction of
12 the parent-child relationship;

13 (3) "present value of future periodic payments" means the
14 sum of money needed now that, when added to what the sum may rea-
15 sonably be expected to earn in the future, will equal the amount of
16 the periodic payment at the time in the future when it will be paid.

17 * Sec. 3. AS 09.16 is repealed.

18 * Sec. 4. AS 09.17.020 enacted in sec. 1 of this Act has the effect of
19 amending Alaska Rule of Civil Procedure 58 by requiring the court to deter-
20 mine the present value of future damages included in its judgment.

21 * Sec. 5. AS 09.17.020 enacted in sec. 1 of this Act has the effect of
22 amending Alaska Rule of Civil Procedure 52 by requiring the court to make a
23 specific finding as to the amount of periodic payments intended to compen-
24 sate a judgment creditor for future damages.

25 * Sec. 6. AS 09.17.020, 09.17.030, and 09.17.040 enacted in sec. 1 of
26 this Act have the effect of amending Alaska Rule of Civil Procedure 54
27 regarding entry of judgment ordering payment of future damages, and requir-
28 ing apportionment of damages among the parties.

29 * Sec. 7. AS 09.17.030 enacted in sec. 1 of this Act has the effect of

1 amending Alaska Rule of Civil Procedure 49 by requiring the trier of fact
2 to determine a party's proportionate share of the total damages.

3 * Sec. 8. AS 09.17.030 enacted in sec. 1 of this Act has the effect of
4 amending Alaska Rule of Civil Procedure 58 by requiring the court to enter
5 judgment based on each party's proportionate share of liability.

6 * Sec. 9. AS 09.17.040 enacted in sec. 1 of this Act has the effect of
7 amending Alaska Rule of Civil Procedure 82 by limiting the amount that
8 could be awarded as attorney fees in an action for personal injury or
9 property damage.

10 * Sec. 10. APPLICABILITY. Section 1 of this Act applies to causes of
11 action accruing after the effective date of this Act.

12 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).